

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Originating**

### **Senate Bill 669**

BY SENATORS NELSON, CLEMENTS, AZINGER, LINDSAY,

PLYMALE AND KARNES

[Originating in the Committee on Pensions; reported

on February 17, 2022]



1 A BILL to amend and reenact §51-9-4 of the Code of West Virginia, 1931, as amended, relating  
2 to a change in the contribution levels of every person who is serving or shall hereafter  
3 serve as a judge of any court of record of this state and who elects to participate in this  
4 retirement system, on or after July 1, 2014, to no less than three percent and no more  
5 than 10 percent of the participant's annual compensation.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.**

**§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; leased employees; military service credit; maximum allowable and qualified military service; qualifiable prosecutorial service.**

1 (a) Every person who is now serving or shall hereafter serve as a judge of any court of  
2 record of this state shall pay into the Judges' Retirement Fund six percent of the salary received  
3 by such person out of the State Treasury: *Provided*, That when a judge becomes eligible to  
4 receive benefits from such trust fund by actual retirement, no further payment by him or her shall  
5 be required, since such employee contribution, in an equal treatment sense, ceases to be required  
6 in the other retirement systems of the state, also, only after actual retirement: *Provided, however*,  
7 That on and after January 1, 1995, every person who is then serving or shall thereafter serve as  
8 a judge of any court of record in this state shall pay into the Judges' Retirement Fund nine percent  
9 of the salary received by that person: *Provided further*, That consistent with the salary increase  
10 granted to judges of courts of record during the 2005 regular legislative session and to changes  
11 effectuated in judicial retirement by provisions enacted during the third extraordinary legislative  
12 session of 2005, on and after July 1, 2005, every person who is then serving or shall thereafter  
13 serve as a judge of any court of record in this state shall pay into the Judges' Retirement Fund 10  
14 and one-half percent of the salary received by that person: *And provided further*, That on and  
15 after July 1, 2013, except as provided in subsection (b) of this section, every person who is then

16 serving or shall thereafter serve as a judge of any court of record in this state and who elects to  
17 participate in this retirement system shall pay into the Judges' Retirement Fund seven percent of  
18 the salary received. Any prior occurrence or practice to the contrary, in any way allowing  
19 discontinuance of required employee contributions prior to actual retirement under this retirement  
20 system, is rejected as erroneous and contrary to legislative intent and as violative of required  
21 equal treatment and is hereby nullified and discontinued fully, with the State Auditor to require  
22 such contribution in every instance hereafter, except where no contributions are required to be  
23 made under any of the provisions of this article.

24 (b) On and after July 1, 2014, every person who is serving or shall hereafter serve as a  
25 judge of any court of record of this state and who elects to participate in this retirement system  
26 shall contribute to the fund an amount determined by the board. This amount will be based on the  
27 annual actuarial valuation prepared by the State Actuary: *Provided*, That the contribution will be  
28 no less than ~~seven percent or no more than ten and one-half percent~~ three percent or no more  
29 than 10 percent of the participant's annual compensation.

30 (c) On or after July 1, 2013, and each year thereafter, the annual actuarial valuation  
31 prepared by the State Actuary for determination of all participants' contributions and the annual  
32 actuarially required contribution prepared by the State Actuary for use by the courts of this state  
33 for legislative appropriation shall be provided to the Legislature's Joint Committee on Government  
34 and Finance and the Joint Committee on Pensions and Retirement.

35 (d) An individual who is a leased employee shall not be eligible to participate in the system.  
36 For purposes of this system, a "leased employee" means any individual who performs services  
37 as an independent contractor or pursuant to an agreement with an employee leasing organization  
38 or other similar organization. If a question arises regarding the status of an individual as a leased  
39 employee, the board has the final power to decide the question.

40 (e) In drawing warrants for the salary checks of judges, the State Auditor shall deduct from  
41 the amount of each such salary check six percent thereof, which amount so deducted shall be

42 credited by the Consolidated Public Retirement Board to the trust fund: *Provided*, That on or after  
43 January 1, 1995, the amount so deducted and credited shall be nine percent of each such salary  
44 check: *Provided, however*, That consistent with the salary increase granted to judges of courts of  
45 record during the 2005 regular legislative session and to changes effectuated in judicial retirement  
46 by provisions enacted during the third extraordinary legislative session of 2005, on or after July  
47 1, 2005, the amount so deducted and credited shall be 10 and one-half percent of each such  
48 salary check: *Provided further*, That on and after July 1, 2013, except as provided in subsection  
49 (b) of this section, the amount so deducted and credited shall be seven percent of each salary  
50 check: *And provided further*, That on and after July 1, 2014, the amount so deducted and credited  
51 will be determined by the board.

52 (f) Any judge seeking to qualify military service to be claimed as credited service, in  
53 allowable aggregate maximum amount up to five years, shall be entitled to be awarded the same  
54 without any required payment in respect thereof to the Judges' Retirement Fund.

55 (g) Notwithstanding the preceding provisions of this section, contributions, benefits, and  
56 service credit with respect to qualified military service shall be provided in accordance with  
57 Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military  
58 service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement  
59 board is authorized to determine all questions and make all decisions relating to this section and  
60 may promulgate rules relating to contributions, benefits and service credit pursuant to the  
61 authority granted to the retirement board in §5-10D-1 of this code to comply with Section 414(u)  
62 of the Internal Revenue Code.

63 (h) Any judge holding office as such on the effective date of the amendments to this article  
64 adopted by the Legislature at its 1987 regular session who seeks to qualify service as a  
65 prosecuting attorney as credited service, which service credit must have been earned prior to the  
66 year 1987, shall be required to pay into the Judges' Retirement Fund nine percent of the annual  
67 salary which was actually received by such person as prosecuting attorney during the time such

68 prosecutorial service was rendered prior to the year 1987 and for which credited service is being  
69 sought, together with applicable interest. No judge whose term of office shall commence after the  
70 effective date of such amendments to this article shall be eligible to claim any credit for service  
71 rendered as a prosecuting attorney as eligible service for retirement benefits under this article,  
72 nor shall any time served as a prosecutor after the year 1988 be considered as eligible service  
73 for any purposes of this article.